CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 86856 of 2021

(Arising out of Order-in-Original No. 01/BHIWANDI/SB/2021-22 dated 13.07.2021 passed by Commissioner of CGST & Central Excise, Bhiwandi.)

M/s Asmeeta Infratech Ltd **.... Appellant**
11, CFC 5, Asmeeta Textile Park,
Plot No. 1, Additional Kalyan Bhiwandi
Indus Estate Area, Village Kone,
Bhiwandi, Maharashtra- 421 311.

Versus

Commissioner of CGST & Central Excise **.... Respondent**
Bhiwandi
12th Floor, Lotus Info Centre, Near Parel Station,
Parel East, Mumbai - 400 012.

Appearance:
Shri Bharat Raichandani, Advocate for the Appellant
Shri A.K. Shrivastava, Auth. Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87229/2023

Date of Hearing: 01.12.2023
Date of Decision: 01.12.2023

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellant herein is engaged in providing various taxable services defined under the Finance Act, 1994. During the disputed period from 2014-15 to 2017-18, the appellant had sub-leased the industrial lands allotted by Maharashtra Industrial Development Corporation (MIDC) to various customers. The consideration received for such sub-leasing of the property was reflected in the books of account under the accounting heading "Sale of property/rights". On scrutiny of the books of accounts maintained by the appellant, the Service Tax Department alleged that sub-leased amount received by the appellant from various persons should be taxable under the category of 'renting of immovable property', defined as "service" under

Section 65B(41) of the Finance Act, 1994. As against the claim of the Department for classification of the service under the category of 'renting of immovable property', the appellant had contended that the activity of construction of industrial units and sub-leasing the property should appropriately fall under the taxable entry of construction service on which they had already discharged the Service Tax labiality. However, the department did not agree to the views expressed by the appellant and initiated show-cause proceedings, seeking recovery of the Service Tax under the provisions of Section 73 of the Finance Act, 1994. The show-cause notice (SCN) dated 25.06.2020 was adjudicated by the learned Commissioner of GST & CX, Bhiwandi vide Order-in-Original No. 01/BHIWANDI/SB/2021-22 dated 13.07.2021 (hereinafter referred to as the 'impugned order'), wherein Service Tax demand of Rs.8,59,41,160/- along with interest was confirmed and penalties were imposed under Sections 77 & 78 *ibid* on the appellant. Feeling aggrieved with the impugned order, the appellant has filed this appeal before the Tribunal.

2. Learned Advocate appearing for the appellant submitted that for sub-leasing the industrial lands, the appellant received a premium from the person in whose favour the land was sub-leased. He submitted that receipt of premium is more like 'Salami' inasmuch as it is not in the form of rent because appellant receives rent on regular basis for rental of the premises. He further submitted that since the Department has confirmed the demand on the premium amount, the same cannot be considered as the service under the category of renting of immovable property. He has relied upon the judgments of the Tribunal in the cases of *Greater Noida Industrial Development Authority Vs. CCE & ST, Noida – 2015 (38) STR 1062 (Tri-Del), Gujarat Power Corporation Ltd. Vs. CCE & ST vide Final Order No. A/11392/2022 dated 18.11.2022, and M/s Luxmi Township Ltd. Vs. Commissioner of CGST & CS, Siliguri vide Final Order No. 77349/2023 dated 18.10.2023* to state that the issue arising out of the present dispute is no more open for any debate.

3. On the other hand, learned AR appearing for the Revenue reiterates the findings recorded in the impugned order and further submitted that since the premium amount was received by the appellant on periodical basis, the same should be considered as rent and since such rental amount is in context with immovable property, the provisions of taxable service under the category of renting of immovable property is squarely applicable for payment of Service Tax on the amount of premium received by the appellant.

4. Heard both sides and perused the records.

5. The appellant in this case, is engaged in the business of development of an Integrated Textile Park (ITP), launched by the Ministry of Textiles in the Government of India. ITP was set up with the objective of establishment of Integrated Hi-Tech Textile parks with infrastructures and manufacturing facilities, based on Public-Private Partnership (PPP) model. The said scheme was launched for facilitating textile unit/s to meet international environment and social standards by providing various subsidies. For carrying out the objective of this scheme, the appellant had applied for allotment of land, which was allotted by the Maharashtra Industrial Development Corporation (MIDC). Some portion of the allotted land was leased out by the appellants to various parties. We have perused one of the agreement dated 28.06.2016, entered into between the appellant as the 'Lessor' and M/s Karma Plastic, Mumbai, as the 'Lessee'. Paragraph 3.5 of the said agreement has provided that the lessee shall pay the annual lease rent of Re.1/- to the lessor. In addition to such lease rental, the said lessee had also paid one time premium to the appellant, which is generally considered as 'Salami'. The department had interpreted that such premium amount received by the appellant should be treated as consideration for provision of taxable service under the category of 'renting of immovable property', defined under Section 66E *ibid*.

6. Under the provisions of Section 66E ibid, the service under the category of 'renting of immovable property' has been considered as a declared service. Thus, any amount received towards 'rent' for letting

out the property will only be liable for payment of service tax and not otherwise. As per the contractual norms, the rent amount has been fixed, which the appellant is entitled to receive from the lessee for letting out the property, which had not been disputed by the department in the present case. One time premium received by the appellant cannot be equated with rent inasmuch as the said amount is payable by the lessee for obtaining lease of the immovable property and for various infrastructural facilities provided in that property. In other words, since such premium amount is not in the context with the occupation of the immovable property leased, the same shall not be treated as a 'consideration', for letting out the property.

7. We find that the issue arising out of the present dispute is no more *res integra*, in view of the order dated 28.08.2014 passed by this Tribunal, in the case of *Greater Noida Indl. Development Authority Vs. C.C.E & S.T., Noida* (supra). The relevant paragraph in the said order is extracted herein below:

> ***"10.1*** *A lease is a transaction, which has to be supported by consideration. The consideration may be either premium or rent or both. The consideration which is paid periodically is called rent. As regards premium, the Apex Court in the case of Commissioner of Income Tax, Assam and Manipur v. Panbari Tea Co. Ltd. reported in (1965) 3 SCR 811 has made a distinction between premium and rent observing that when the interest of the lessor is parted with for a price, the price paid is premium or salami, but the periodical payments for continuous enjoyment are in the nature of rent, the former is a Capital Income and the latter is the revenue receipt. Thus, the premium is the price paid for obtaining the lease of an immovable property. While rent, on the other hand, is the payment made for use and occupation of the immovable property leased. Since taxing event under Section 65(105)(zzzz) read with Section 65(90a) is renting of immovable property, Service Tax would be leviable only on the element of rent i.e. the payments made for continuous enjoyment under lease which are in the nature of the rent irrespective of whether this rent is collected periodically or in advance in lump sum. Service Tax under Section 65(105)(zzzz) read with Section 65(90a) cannot be charged on the "premium" or 'salami' paid by the lessee to the lessor for transfer of interest in the property from the lessor to the lessee as this amount is not for continued enjoyment of the property leased. Since the levy of Service Tax is on renting of immovable property, not on transfer of interest in property from*

> *lessor to lessee, Service Tax would be chargeable only on the rent whether it is charged periodically or at a time in advance. In these appeals, in the show cause notice dated 19-3-2012 issued by the Addl. Director, DGCEI, New Delhi, Service Tax has been demanded only on the lease rent and not on the premium amount while in the subsequent show cause notice dated 17-10-2012 issued by the Commissioner of Central Excise and Service Tax, Noida, the amount of premium has also been included in the lease rent for the purpose of charging of Service Tax for which no valid reasons have been given. Therefore, the Order-in-Original dated 30-4-2013 confirming the Service Tax demand on the premium amount is not correct and to this extent, the Service Tax demand would not be sustainable."*

8. In view of the settled position of law, we do not find any merits in the impugned order, insofar as it has confirmed the adjudged demands on the appellant. Therefore, by setting aside the impugned order, the appeal is allowed in favour of the appellant.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha